

STORAGE NAME: h2019z.cfe
DATE: May 8, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Children and Family Empowerment
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 2019 (PCB CFE 97-05)

RELATING TO: Programs administration by the Department of Children and Family Services

SPONSORS(S): Committee on Children and Family Empowerment and Representative Lacasa

STATUTE(S) AFFECTED: Section 20.19, F.S.

COMPANION BILL(S): CS/SB 156 [compare]

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CHILDREN AND FAMILY EMPOWERMENT YEAS 6 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS [WITHDRAWN]
- (3) HEALTH AND HUMAN SERVICES APPROPRIATIONS [WITHDRAWN]
- (4)
- (5)

I. FINAL ACTION STATUS:

Passed the Legislature. Became Law without the Governor's signature. Chapter No. 98-25, L.O.F.

II. SUMMARY:

The bill amends s. 20.19, F.S., to change the way the Department of Children and Family Services procures contracts for services, conducts contract negotiations, and monitors and evaluates elements of the contract management process.

Requires the department to competitively procure any contract for client services under any of the following circumstances:

- If, after a reasonable opportunity, a contract provider fails to meet cost and performance standards established by the department.
- If a new program or service is authorized and funded and the annual contract value is \$300,000 or more.
- The department has concluded, after reviewing market prices and available treatment options, that there is evidence that the department can improve the performance outcomes produced by its contract resources.

Requires the Office of Standards and Evaluation in the Department of Children and Family Services to evaluate and report annually to the Legislature on a variety of issues specifically related to client services and contracting, in addition to providing information about the status of the department's compliance with provisions currently in statute.

Assigns additional duties relative to contract monitoring and quality assurance. It requires each program office to ensure compliance of the district programs with statewide program standards and performance measures.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

DEPARTMENT STRUCTURE

The Department of Children and Family Services is under the direction of a Secretary. The department is divided into 15 geographic service districts under which all service programs are planned and administered. Each district has an administrator who has direct line authority over all departmental programs assigned to the district. The district administrator is authorized to appoint a district program manager for social services, a district manager for administrative services, and program supervisors for each program area.

The s. 20.19, F.S., creates a headquarters program office to oversee and administer the program offices of the districts. These program offices include:

1. Economic Self-Sufficiency Program Office.--The responsibilities of this office encompass income support programs within the department, WAGES, food stamps, and state supplementation of the supplemental security income (SSI) program.
2. Developmental Services Program Office.--The responsibilities of this office encompass programs operated by the department for developmentally disabled persons. Developmental disabilities include any disability defined in s. 393.063, F.S.
3. Children and Families Program Office.--The responsibilities of this program office encompass early intervention services for children and families at risk; intake services for protective investigation of abandoned, abused, and neglected children; interstate compact on the placement of children programs; adoption; child care; out-of-home care programs and other specialized services to families; and child protection and sexual abuse treatment teams created under chapter 415.
4. Alcohol, Drug Abuse, and Mental Health Program Office.--The responsibilities of this office encompass all alcohol, drug abuse, and mental health programs operated by the department.

The headquarters program offices each are headed by an assistant secretary. The law directs each Tallahassee program office to ensure that family services programs are implemented according to legislative intent and as required by state and federal laws. The program offices also are directed to establish program standards and performance objectives and to review, monitor, and ensure compliance of district program offices with statewide standards and performance objectives. The headquarters program offices also are directed to conduct outcome evaluations and ensure program effectiveness; to develop workload and productivity standards; to develop resource allocation methodologies; and to compile reports, analyses, and assessments of client needs on a statewide basis.

CONTRACT MANAGEMENT

Between FYs 1985-86 and 1996-97, the amount of services purchased from private service providers in programs under Economic Self-Sufficiency; Developmental Services; Children and Families Programs; and Alcohol, Drug Abuse, and Mental Health by the former Department of Health and Rehabilitative Services increased from \$386 million to \$1.1 billion. The percentage of services that is currently provided by contract in the Department of Children and Family Services varies from about 60 percent to nearly 95 percent, depending upon the program.

Contract management is typically delegated from the Tallahassee headquarters office to the districts. The most conventional organizational structure, as it relates to contract management, places contract managers under the appropriate district program administrator. In such a structure, contract administrators are placed under the district manager for administration and have no direct line authority over contract managers. In some districts there has been an effort to centralize functions and this centralization has resulted, in the opinion of staff from those districts, in increased effectiveness and efficiency.

The delegation of responsibility from the headquarters office of the Department of Children and Families to the district level has diminished the ability of headquarters staff to make contracting decisions, while placing the decision-making responsibility increasingly in the hands of the local district administrator. Thus, the structure of the contracting "office" as well as certain contracting processes varies from district to district.

The department's Assistant Secretary for Administration is responsible for various duties related to administration and management practices in the department. These duties include, among other responsibilities, developing and implementing uniform policies, procedures, and guidelines with respect to finance and accounting, contract administration, and procurement.

BREACH OF CONTRACT

Generally, when the department identifies either a breach of contract on the part of a provider or shortcomings related to standards of service, the measures that can be taken are limited to either a corrective action plan or cancellation of the contract. Currently, there is no requirement for the department to include provisions related to intermediate penalties, its rules or contracts. This means that the service districts and contract managers currently lack the ability to impose intermediate sanctions in the event a service provider fails to comply with a corrective action plan or in some other manner fails to comply with the terms of his or her contract.

When an employee of the department who is responsible for contracting activities does not make every effort possible to ensure that a provider of contracted client services meets the provisions of the contract, there is no formalized process in place for the department to discipline that employee.

CONTRACT NEGOTIATION

Historically, employees representing the Department of Children and Family Services rarely are able to match the experience and expertise of the service provider representatives in the contract-negotiation process. Currently, employees of the department who are responsible for negotiating a contract are often individuals who have a human services or social work background, some administrative experience, and generally, little formal education and limited training in contract negotiation. At present, the department is unable to provide its contract managers with legal and fiscal assistance during contract negotiation meetings to adequately represent the interests of the state. In contrast to department staff, individuals who represent service providers during contract negotiations (particularly large providers negotiating large contracts) are often contract attorneys, certified public accountants, or other individuals who have extensive negotiating experience.

CONTRACT STAFF

Department staff responsible for contract negotiation and contract management are frequently assigned other duties. This means that contracting responsibilities only represent a portion of an employee's total job responsibilities. Although the department provides many educational or training opportunities for its contract managers, those employees indicated during the research for the interim project that they would like more training opportunities.

Employees of the department responsible for contract management and contract administration activities are assigned a variety of job classifications throughout the state that vary among and within districts. Pay grades associated with these positions statewide range from a pay grade 18 (annual salary range \$22,677-\$37,395) to a pay grade 25 (annual salary range \$35,032-\$59,239). This results in significant pay disparity among these employees that is not necessarily related to the individual employee's job responsibilities or to the quality of that person's job performance.

COMPETITIVE BIDDING

Section 287.057(3)(f), F.S., provides a list of services that are exempted from a competitive procurement process when any agency is contracting for these services. Nearly all client services provided by the Department of Children and Family Services are exempt from the competitive procurement process, although the statute does not prohibit the department from competitively bidding any client-service contract. The department generally takes advantage of the exemption provision, in part because of the workload that would be created in competitively procuring services through the traditional request for proposal process or the invitation to bid process. In FY 1996-97, only about 13 percent of the client services contracts were procured competitively by the Department of Children and Family Services.

Chapter 120, F.S., the Administrative Procedure Act, generally governs the actions of state agencies if the actions affect the substantial interests of citizens or organizations. Section 120.57, F.S., specifies the procedures that are applicable to protests in the award of a contract or the bidding preceding a contract award. According to staff of the Department of Children and Family Services, bid protests filed under the Administrative Procedure Act can take from 6 months to 2 years to be resolved.

CHILDREN'S MENTAL HEALTH SERVICES

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 20.19, F.S., to change the way the Department of Children and Family Services procures contract for services, conducts contract negotiations, and monitors and evaluates elements of the contract management process. The changes are designed to increase competitiveness in procurement of services and to increase accountability for contract management in the department.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. *Does the bill create, increase or reduce, either directly or indirectly?*

i. *Any authority to make rules or adjudicate disputes?*

Yes. It would require the department to adopt rules authorizing intermediate sanctions to be imposed against a service provider that fails to comply with a corrective action plan or that otherwise fails to provide the contracted services.

ii. *Any new responsibilities, obligations or work for other governmental or private organizations or individuals?*

Yes.

The bill requires increased reporting by the department's Office of Standards and Evaluation in the Department of Children and Family Services. It requires the office to evaluate and report annually to the Legislature on a variety of issues specifically related to client services and contracting, in addition to providing information about the status of the department's compliance with provisions currently in statute.

The Department of Children and Family Services is directed to create contract management units at the district level. The contract management units would be staffed by individuals who are specifically trained to perform the functions related to contract management.

The bill creates the following responsibilities that currently do not exist in all areas of the state.

Information and referral
Assessment services

Service planning teams
Independent case managers
Market rate reimbursement
Purchase of service system [in lieu of contract for services]

iii. *Any entitlement to a government service or benefit?*

No

b. *If an agency or program is eliminated or reduced:*

i. *What responsibilities, costs and powers are passed on to another program, agency, level or government, or private entity?*

N/A

ii. *What is the cost of such responsibility at the new level/agency?*

N/A

iii. *How is the new agency accountable to the people governed?*

N/A

2. Lower Taxes:

a. *Does the bill increase anyone's taxes?*

No.

b. *Does the bill require or authorize an increase in any fees?*

No.

c. *Does the bill reduce total taxes, both rates and revenues?*

No.

d. *Does the bill reduce total fees, both rates and revenues?*

No.

e. *Does the bill authorize any fee or tax increase by any local government?*

No.

3. Personal Responsibility:

- a. *Does the bill reduce or eliminate an entitlement to government services or subsidy?*

No.

- b. *Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?*

Individuals may pay a sliding fee for children mental health services depending on income [note: this element already exists in law].

4. Individual Freedom:

- a. *Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?*

No.

- b. *Does the bill prohibit, or create new government interference with, any presently lawful activity?*

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- i. *Who evaluates the family's needs?*

A child needing mental health services from the state would have to meet the assessment criteria in statute to be eligible for services. This determination is made by individuals approved by the department to screen and make clinical assessment.

- ii. *Who makes the decisions?*

For children's mental health services, the screening and assessment process, and the service planning team with participation by the child's parent would determine what services were needed.

- iii. *Are private alternatives permitted?*

Yes. The children's mental health services delivery system is operated by private providers.

- iv. *Are families required to participate in a program?*

N/A

- v. *Are families penalized for not participating in a program?*

N/A

- b. *Does the bill directly affect the legal rights and obligations between family members?*

No.

- c. *If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:*

- i. *Parents and guardians?*

Unless ordered by a court, the parent remains in control of the decision to engage the child in mental health services.

- ii. *Services providers?*

N/A

- iii. *Government employees/agencies?*

The department controls the children's mental health service delivery system through the approval of providers and several mechanisms [purchase of service, rate agreements, contracts] to secure needed services.

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 20.19, F.S.

OFFICE OF STANDARDS AND EVALUATION

Requires the Office of Standards and Evaluation in the Department of Children and Family Services to evaluate and report annually to the Legislature on a variety of issues specifically related to client services and contracting, in addition to providing information about the status of the department's compliance with provisions currently in statute. The new issues on which the office would report include:

- The effectiveness of the department's contracts in accomplishing program outcomes and in supporting statewide quality assurance programs.
- The adequacy of resources and internal controls used by the district program offices to ensure the quality of client services through performance standards and other agreements.
- The effectiveness and quality of contracted services for each client target group as determined by annual performance reporting and the results of quality assurance monitoring.
- The effectiveness of the contract evaluation teams.

PROGRAM OFFICES

Assigns additional duties relative to contract monitoring and quality assurance. It requires each program office to ensure compliance of the district programs with statewide program standards and performance measures. The Tallahassee program offices also would provide general supervision of the district services in their respective program areas. The duties of headquarters offices would include developing and coordinating additional training; coordinating program-area research; identifying statewide needs and potential solutions and priorities; providing district staff with technical assistance; and monitoring programs and districts to ensure quality throughout the state.

ASSISTANT SECRETARY FOR ADMINISTRATION

The bill requires the assistant secretary to evaluate and report to the Legislature by July 1, 1999, and annually thereafter, on the methods used by each district program office to ensure the fiscal accountability of providers of client services with whom the department contracts. The assistant secretary also would be required to evaluate the service district administrative operations and to require corrective action plans of those district administrative functions which do not conform to the uniform operating procedures of the department.

COMPETITIVE PROCUREMENT

Requires the department to competitively procure any contract for client services under any of the following circumstances:

- If, after a reasonable opportunity, a contract provider fails to meet cost and performance standards established by the department.
- If a new program or service is authorized and funded and the annual contract value is \$300,000 or more.
- The department has concluded, after reviewing market prices and available treatment options, that there is evidence that the department can improve the performance outcomes produced by its contract resources.

It allows the Secretary of the Department to waive the contract procurement criteria for no more than a year if the following circumstances exist:

1. An immediate threat to the health, safety, or welfare of the department's clients.
2. A threat to appropriate use or disposition of facilities that have been financed in whole, or in substantial part, through contracts or agreements with a state agency.
3. A threat to the service infrastructure of a community which could endanger the well-being of the department's clients.

It also gives the department authority to develop rules outlining a competitive-procurement process as an alternative to the request-for-proposal (RFP) or the invitation-to-bid (ITB) process.

The department is authorized to execute multi year contracts to make the most efficient use of the resources devoted to contract processing and execution.

Allows the department to competitively procure and contract for systems of treatment or service that involve multiple providers, rather than procuring and contracting for treatment or services separately from each participating provider.

It requires the department to request information from governmental entities and take into account the information in the selection process and if the governmental entity provides at least 25% of the value of the contact an opportunity for the entity to have an employee on the selection team.

Allows the department to contract for or provide assessment and case-management services independently from treatment services.

COMPLIANCE AND ACCOUNTABILITY

Requires the department to adopt rules authorizing intermediate sanctions to be imposed against a service provider that fails to comply with a corrective action plan or that otherwise fails to provide the contracted services. Any fine imposed on a contractor would be paid by the contractor from funds other than those used to pay for client services. The department would notify the board of directors and other responsible parties of any corporate service provider in the event a financial penalty is imposed.

The department is directed to develop standards of conduct for its employees and a range of disciplinary actions which are specifically related to an employee's responsibilities relating to contract management.

The bill would require that the department implement systems and controls to ensure financial integrity and service quality in the Developmental Services Medicaid Waiver program by December 31, 1998. The Auditor General would be required to audit the Medicaid Waiver program specifically as part of the audit of the Department of Children and Family Services for FY 1998-99. Similarly, the Office of Program Performance and Government Accountability (OPPAGA) would be required to review the Developmental Services Medicaid Waiver program and to submit a report to the Legislature by December 31, 1999.

The department is required to cancel any contract if a service provider fails to meet performance standards set in the contract. The service provider would first be given a reasonable opportunity to address performance deficiencies, however, absent extenuating circumstances, the contract would be canceled and the department would be precluded for 2 years from entering a new contract for the same services with the provider.

If an adult substance abuse services provider fails to meet the performance standards established in the contract, the department may allow a reasonable period, not to exceed 6 months, for the provider to correct performance deficiencies. If the performance deficiencies are not resolved to the satisfaction of the department within 6 months, the department must cancel the contract with the adult substance abuse provider, unless there is no other qualified provider in the service area.

It allows the department to place a lien against the property [built using state funds] of a provider when there is contract dispute.

Allows the department to competitively procure any contract when it deems it is in the best interest of the state to do so. The contract procurement criteria do not prohibit this authority.

Allows the department to include cost-neutral, performance-based incentives in contracts that may vary according to the extent a provider achieves or surpasses the performance standards set forth in the contract.

Section 2

The department is required to seek outside assistance in providing training for employees who negotiate contracts. The training would enable contract managers to better represent the state's interests when negotiating contracts for client services. To further improve the negotiating position of the department, the department would be responsible for ensuring that individuals with particular expertise in legal and fiscal matters and staffs who are particularly skilled in negotiating are available to the employees who negotiate client services contracts.

The Department of Children and Family Services is directed to create contract management units at the district level. The contract management units would be staffed by individuals who are specifically trained to perform the functions related to contract management. These contracting units would be similar to those that have already been created in a few districts in the state. District contract managers would be career service employees, and would be assigned to the same pay grade to the extent possible. These contract management units would be required to be in operation throughout the state no later than March 1, 1998.

The department would report to the Legislature on the efforts that have been made in each of the 15 districts related to centralization of contracting functions. Should a district choose not to centralize contract management activities, the report would explain the reasons for that decision as well as the efforts the district has made to increase efficiency related to the duties associated with contract management activities.

Section 3. Provide the act take effect on October 1, 1998.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments

2. Recurring Effects:

See Fiscal Comments

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

It is likely that private-sector service providers would incur legal expenses associated with bid disputes since the award of a competitive contract by a state agency may be subject to challenge.

2. Direct Private Sector Benefits:

The provisions of the bill that would require the department to competitively procure certain contracts for services, could result in more businesses competing for the opportunity to provide services.

3. Effects on Competition, Private Enterprise and Employment Markets:

Alternatively, the competitive procurement process could adversely affect those businesses that have been providing contracted services to clients of the department for a number of years without competing for their contract.

D. FISCAL COMMENTS:

The bill received \$1.2 million and 22 FTEs in the 1998/1999 General Appropriations Act.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

VI. COMMENTS:

04/14/97 H Filed; Introduced -HJ 00557

04/18/97 H Referred to Governmental Rules & Regulations (GRC); Health & Human Services Appropriations -HJ 00662

04/29/97 H Withdrawn from Governmental Rules & Regulations (GRC) -HJ 01188; Now in Health & Human Services Appropriations

04/30/97 H Withdrawn from Health & Human Services Appropriations -HJ 01224; Placed on Calendar

05/02/97 H Carried over to 1998 Session pursuant to House Rule 96, Placed on Government Services Council Calendar

03/03/98 H CARRIED OVER; In Government Services Council, pending ranking

03/10/98 H Placed on Government Services Council Calendar -HJ 00161

03/17/98 H Read second time -HJ 00190; Amendment pending -HJ 00195

03/31/98 H Was taken up -HJ 00368; Pending amendment adopted -HJ 00369; Amendment(s) reconsidered, adopted -HJ 00370

04/01/98 H Read third time -HJ 00397; Passed as amended; YEAS 113 NAYS 0 -HJ 00397; Immediately certified -HJ 00399

04/01/98 S In Messages

04/02/98 S Received, referred to Children, Families and Seniors; Ways and Means -SJ 00384; Immediately withdrawn from Children, Families and Seniors; Ways and Means -SJ 00358; Substituted for CS/SB 156- SJ 00358; Read second time -SJ 00358; Amendment(s)

adopted -SJ 00358; Read third time -SJ 00358; Passed as amended; YEAS 36 NAYS 0 -SJ 00358; Immediately certified -SJ 00358

04/02/98 H In returning messages

STORAGE NAME: h2019z.cfe

DATE: May 8, 1998

PAGE 14

04/14/98 H Concurred -HJ 00561; Passed as amended; YEAS 106 NAYS 0 -HJ 00561;
Ordered engrossed, then enrolled -HJ 00562
04/20/98 Signed by Officers and presented to Governor -HJ 00743
04/28/98 Became Law without Governor's Signature; Chapter No. 98-25 - HJ 01408

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VIII. SIGNATURES:

COMMITTEE ON CHILDREN AND FAMILY EMPOWERMENT

:

Prepared by:

Legislative Research Director:

Bob Barrios

Bob Barrios

FINAL RESEARCH PREPARED BY COMMITTEE ON Children and Family Empowerment:

Prepared by:

Legislative Research Director:

Bob Barrios

Bob Barrios